



FEMA

U.S. Department of Homeland Security
Washington, D.C. 20472

September 22, 2020

MEMORANDUM FOR: The Honorable Paul Ray
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

THROUGH: The Honorable Karen S. Evans
Chief Information Officer
Department of Homeland Security

FROM: Tracey L. Showman
Chief Administrative Officer
Mission Support
DHS Federal Emergency Management Agency

SUBJECT: Emergency Approval Request of New Information Collection to the Office of Management and Budget (OMB) Collection 1660-NEW Rated Orders Adjustments, Exceptions, or Appeals Under the Emergency Management Priorities and Allocations System (EMPAS).

The Federal Emergency Management Agency (FEMA) seeks to utilize the emergency process for approval for a new information collection to the Office of Management and Budget (OMB) Collection 1660-NEW Rated Orders Adjustments, Exceptions, or Appeals Under the Emergency Management Priorities and Allocations System (EMPAS) in accordance with Title I of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4501, *et seq.*) and Executive Order 13603, 77 FR 16651 (Mar. 22, 2012) and Executive Order 13911, 85 FR 18403 (Apr. 1, 2020). It is vital that FEMA implement the information collection as soon as possible to support immediate needs in response to the COVID-19 pandemic. In accordance with the Paperwork Reduction Act (PRA) and the Office of Management and Budget's (OMB) implementing regulations at 5 C.F.R. § 1320.13: (1) this information is necessary to the mission of the agency, (2) this information is necessary prior to the expiration of time periods established under PRA, (3) public harm is reasonably likely to result if normal clearance procedures are followed, and (4) an unanticipated event has occurred.

1. Information is Essential to the Mission of the Agency

This information is necessary to support the President's priorities and allocations authority under the DPA implemented by the Emergency Management Priorities and Allocations System (EMPAS) regulation (44 CFR part 333), which was added by FEMA's May 13, 2020 *Emergency Management Priorities and Allocations System Interim Final Rule* (RIN 1660-AB04). The purpose of this

authority is to ensure the timely delivery of products, materials, and services to meet current national defense requirements. The definition of “national defense” in Section 702(14) of the DPA provides that this term includes “homeland security,” “emergency preparedness activities” conducted pursuant to Section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5195a), and “critical infrastructure protection and restoration.” The President exercised his authority pursuant to the DPA to respond to the COVID-19 pandemic in Executive Orders 13909 and 13910, authorizing the Secretary of Health and Human Services to prioritize and allocate health and medical resources and prevent hoarding of such resources to respond to the spread of COVID-19. Pursuant to Executive Order 13911, the President has also delegated to the Secretary of Homeland Security the authority conferred by section 101 of the DPA and the authority to promulgate regulations necessary to implement the Executive Order. The Secretary of Homeland Security has further delegated this authority to the FEMA Administrator in DHS Delegation 09052 Rev. 00.1 (Apr. 1, 2020).

Because of the substantial risk to life, safety, or health of individuals due to the shortage in emergency medical products, materials, and equipment supporting distribution infrastructure, and other life-sustaining products, materials, and equipment related to COVID-19 treatment, FEMA requests an emergency approval to collect the necessary information from contractors when placing rated orders with suppliers, to obtain timely delivery of products, materials, equipment, or services from suppliers, or for any other reason under the EMPAS, in support of approved national programs.

To help ensure the timely delivery of goods and services in support of approved emergency management programs, section 333.13 of the EMPAS regulation requires suppliers to accept or reject priority rated orders for these goods and services which are placed with them by their customers within established time periods (10 working days for a “DX” rated order and 15 working days for a “DO” rated order). Section 333.13 also requires that certain emergency preparedness rated orders must be accepted or rejected within shorter time periods as specified in section 333.12(b). Section 333.13(d)(3) of the EMPAS regulation requires that, if after acceptance of a rated order the supplier discovers that shipment or performance against the order will be delayed, the supplier must notify the customer immediately in written electronic format, giving the reasons for the delay, and advising the customer of a new shipment or performance date. This collection of information involves order communications between a Federal Government prime contractor and its subcontractors.

Finally, under section 333.70 each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to 44 CFR part 333 or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided. Under section 333.71, any person who has had a request for adjustment or exception denied by FEMA under section 333.70 may appeal to the Administrator. Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from a full and precise statement of the reasons the decision should be modified or reversed. Regarding customer notification of the acceptance of rated orders, the rejection of rated orders, and the delay of rated orders, the Federal Government does not typically receive information under this collection unless FEMA is facilitating a sale to a third party.

2. The Information is needed Prior to Expiration of Time Periods Established under PRA

To summarize, FEMA knows that COVID-19 infection transmits easily, spreads quickly through global travel, and can have a high mortality rate for some of the most vulnerable members of society. Currently, there exists no vaccine or therapy for the disease. The Federal Government urgently needs to expand production capability and supply for critical medical supplies, equipment, and

facilities associated with COVID-19 diagnosis and treatment. FEMA has the lead role in coordinating the Federal response to COVID-19 and requires a robust, efficient mechanism for exercising its authority under section 101 and other applicable authorities to ensure the continued availability of these resources to diagnose, treat, and contain this disease. Given the national emergency caused by COVID-19, it would be impracticable and contrary to the public health—and, by extension, the public interest—to delay implementing this information collection until after FEMA has completed the PRA process.

3. Public Harm is Reasonably Likely to Result if Normal Clearance Procedures are Followed

Public harm is reasonably likely to result if normal clearance procedures are followed because it may lead to delays in obtaining the urgently needed products, materials, equipment, and services being requested through rated orders.

4. An Unanticipated Event has Occurred

The COVID-19 pandemic continues to increase exponentially, and the full scope of the impact to Americans remains unknown. However, based on the effect in other countries, we know that life-sustaining medical products, materials, equipment, and services are in short supply and FEMA must act immediately to ensure any issues with rated orders are resolved efficiently.

FEMA is requesting emergency approval of this information collection request so that it can support the President's priorities and allocations authority approval. Delay in the approval of these information collections will disrupt FEMA's ability to comply with other provisions of the law and its overall mission.

5. Conclusion

Following the normal clearance procedures for approval, this information collection during the COVID-19 pandemic response will delay FEMA's ability to assist organizations directly providing life-sustaining services to COVID-19 infected survivors. Every day the pandemic situation worsens in the United States, and public requests for immediate action multiply. As discussed, FEMA certifies that the requirements of 5 CFR 1320.13(a) are met, and it is vital this new collection be implemented immediately, because: (1) this information is necessary to the mission of the agency, (2) this information is necessary prior to the expiration of time periods established under PRA, (3) public harm is reasonably likely to result if normal clearance procedures are followed, and (4) an unanticipated event has occurred.

Thank you for your consideration.